

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 12.09.2006

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

C.R.P. (PD) .No.390 & 391 of 2006

and

C.M.P.No.3428 & 3429 of 2006

Bank of India,
Kurichi Industrial Estate Branch,
S.B.Towers,
Sundarapuram post,
Coimbatore -24,
rep by its Chief Manager.

.. Petitioner in both CRPs.

[Defendants]

vs.

1.Manickam @ Sellakumarasamy

.. Respondent in C.R.P. (PD) .390/06

[Plaintiff]

2.Rayappan

.. Respondent in C.R.P. (PD) .391/06

[Plaintiff]

Prayer: These Civil Revision Petitions are filed under Article 227 of the constitution of India against the orders and decreetal orders dated 7.10.2005 passed in I.A.1194 of 2005 in O.S.NO.349/2005 and I.A.No.1195/2005 in O.S.No.350/2005 respectively, on the file of the District Munsif, Pollachi.

For Petitioner : Mr. F.B.Benjamin George (in both CRPs)
For Respondent : Mr. V.Barathidasan (in both CRPs)

COMMON ORDER

I.A.No.1194/2005 in O.S.349/2005 and I.A.No.1195/2005 in O.S.No.350/2005 have been filed under Order VII Rule 11 of CPC with a prayer to reject the plaint on the ground that under Section 34 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002), (herein after be mentioned as SRFAESI Act), the Civil Court has no jurisdiction to entertain the suit. Both IAs have been dismissed by the learned District Munsif of Pollachi. Hence, the revisions have been filed by the Defendant in both the suit.

2. The substantial question of law to be decided in both the CRPs is whether the plaints in O.S.349/05 and O.S.350/05 are liable to be rejected

under Order VII Rule 11 of CPC for the reasons stated in the memorandum of revision in both the revision petitions.

3. The Point:-

3(1) O.S.No.350/2005 (relating to CRP.PD.391/2006) has been filed by the plaintiff for declaration that the notice dated 5.1.2005 of the Defendant, viz. Bank of India, Kurichi Industrial Estate Branch, represented by his Senior Branch Manager, is void, illegal, ultravires of the SRFAESI Act and also for permanent injunction to restrain the Defendant from alienating or encumbering or transferring or inducing any one into the suit properties.

3(2) The plaintiff in O.S.349/2005 (relating to CRP.PD.390/06) has filed the suit for declaration that the plaintiff is in actual possession of the suit properties and the Defendant (Bank of India, Kurichi Industrial Estate Branch, represented by his Senior Branch Manager) had only symbolic possession and also for permanent injunction restraining the Defendant from in anyway interfering with the plaintiff's legal and physical possession in any manner and also for declaration that the defendant's right if at all only to symbolic possession and also to restrain the Defendant by means of permanent injunction not to tamper with the building and its physical features including all the articles, things set out in B-Schedule property except by due process of law.

3(3) The plaintiff in O.S.No.350/2005, viz., Rayappan is the son-in-law of the plaintiff in O.S.No.349/2005, viz. Manickam @ Sellakumarasamy. The Defendant in both the suits are one and the same viz. Bank of India, Kurichi Industrial Estate Branch, represented by his Senior Branch Manager.

3(4) The short facts in O.S.No.350/2005 is that the plaintiff is the director of M/s.Match Winner Tax (P) Limited - a private limited company at Tiruppur. The Plaintiff has borrowed a loan from the respondent-Bank under various heads to the tune of Rs.2,95,00,000/-. Since the plaintiff-Rayappan has committed default in paying the loan amount, the Defendant-Bank had issued notice under Section 13(2) of the SRFAESI Act. In respect of the plaint schedule property, the plaintiff has created an equitable mortgage in favour of the Bank by depositing title deeds of the property. Since the plaintiff/borrower has avoided the said notice, the Defendant/Bank had taken possession of the property as contemplated under Section 13(4) of the SRFAESI Act on 21.6.2005. Under such circumstances, the plaintiff has filed O.S.No.350/2005 for declaration that the notice issued by the Bank under Section 13(2) of the SRFAESI Act is void, illegal and ultravires and also for permanent injunction. The Defendant/Bank has also filed I.A.No.1195/2005 under Order VII Rule 11 of CPC to reject the plaint on the ground that under Section 34 of the SRFAESI Act, the Civil Court has no jurisdiction to entertain the suit. I.A.No.1195/2005 has been dismissed by the trial Court. Hence, the Defendant/Bank has preferred C.R.P. (PD).No.391/2006.

3(5) The Defendant has filed I.A.No.1194/2005 in O.S.No.349/2005 under Order VII Rule 11 of CPC on the ground that the suit is barred under Section 34 of the SRFAESI Act. I.A.No.1194/2005 in O.S.No.349/2005 was

also dismissed by the trial Court. Hence, the Defendant/Bank has preferred C.R.P.(PD).No.390/2006 before this Court.

3(6) Admittedly O.S.No.349/2005 has been filed by Manickam @ Sellakumarasamy, who is the father-in-law of Rayappan, plaintiff in O.S.No.350/2005. For a loan amount of Rs.2,95,000/- the Bank viz., Bank of India, Kurichi Industrial Estate Branch, represented by his Senior Branch Manager, had issued notice under Section 13(2) of the SRFAESI Act.

3(7) As per section 2 of the SRFAESI Act, the plaint transaction in O.S.No.350/2005 will squarely comes within the purview of the SRFAESI Act. Under Section 13(2) of SRFAESI Act, the borrower is under a liability to a secured creditor under a security agreement, makes any default in repayment of secured debt or any instalment thereof, and his account in respect of such debt is classified by the secured creditor as non-performing asset, then, the secured creditor may require the borrower by notice in writing to discharge in full his liabilities to the secured creditor within sixty days from the date of notice failing which the secured creditor shall be entitled to exercise all or any of the rights under Sub-section (4).

3(8) Admittedly the Bank viz., Bank of India, Kurichi Industrial Estate Branch, represented by his Senior Branch Manager, has issued notice under Section 13(2) of the SRFAESI Act to the plaintiff in O.S.No.350/2005. Since the plaintiff has committed default in payment of the loan amount, the Defendant-Bank had resorted to the remedy provided under Section 13(4) of the SRFAESI Act, i.e., by taking possession of the secured assets of the borrower/plaintiff in O.S.No.350/2005 including the right to transfer by way of lease, assignment or sale for realising the secured asset. To escape from the said action contemplated under Section 13(4)(a) of the SRFAESI Act, the plaintiff has filed O.S.No.350/2005, which is not at all maintainable under Section 34 of the SRFAESI Act, because the Civil Court has no jurisdiction to entertain the said suit. The only forum which is entitled to entertain the said suits under the SRFAESI Act is the Debts Recovery Tribunal.

3(9) It has been clarified by the Honourable Apex Court in a case reported in 2005(3) CTC 545 (N.V.Srinivasa Murthy Vs. Mariyamma (dead) by Proposed LRs) , wherein it has been held as follows:

"This is a fit case not only for rejecting the plaint but imposing exemplary costs on the appellant on the observations of this Court in the case of T.ARvindam Vs. T.V.Satyapal, 1997(4) SCC 467:

The trial court must remember that if on a meaningful - no formal - reading of the plaint it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, it should exercise its power under Order 7, Rule 11, CPC, taking care to see that the ground mentioned therein fulfilled. If clever drafting has created the illusion of a cause of action, the Court must nip it in the bud at the first hearing by examining the party searchingly under Order 10, CPC. An activist judge is the answer to irresponsible law

suits. The trial Courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men (Ch. XI) and must be triggered against them."

In another dictum reported in AIR 2004 SUPREME COURT 2371 (Mardia Chemicals Limited Vs. Union of India), it has been held as follows:

"It has also been submitted that an appeal is entertainable before the Debt Recovery Tribunal only after such measures as provided in sub-section (4) of Section 13 are taken and Section 34 bars to entertain any proceeding in respect of a matter which the Debt Recovery Tribunal or the Appellate Tribunal is empowered to determine. Thus before any action or measure is taken under Sub-Section (4) of Section 13, it is submitted by Mr. Salve, one of the counsel for respondents that there would be no bar to approach the Civil Court. Therefore, it cannot be said no remedy is available to the borrowers. We, however, find that this contention as advanced by Shri Salve is not correct. A full reading of Section 34 shows that the jurisdiction of the Civil Court is barred in respect of matters which a Debt Recovery Tribunal or Appellate Tribunal is empowered to determine in respect of any action taken "or to be taken in pursuance of any power conferred under this Act". That is to say the prohibition covers even matters which can be taken cognizance of by the Debt Recovery Tribunal though no measure in that direction has so far been taken under sub-section (4) of Section 13. It is further to be noted that the bar of jurisdiction is in respect of a proceeding which matter may be taken to the Tribunal. Therefore, any matter in respect of which an action may be taken even later on, the Civil Court shall have no jurisdiction to entertain any proceeding thereof. The bar of Civil Court thus applies to all such matters which may be taken cognizance of by the Debt Recovery Tribunal, apart from those matters in which measures have already been taken under sub-section (4) of Section 13.

However, to a very limited extent jurisdiction of the Civil Court can also be invoked, where for example, the action of the secured creditor is alleged to be fraudulent or their claim may be so absurd and untenable which may not require any probe, whatsoever or to say precisely to the extent the scope is permissible to bring an action in the Civil Court in the cases of English mortgages."

3(10)The learned counsel appearing for the respondent/plaintiff in both the suits would contend that the jurisdiction of the civil Court can also be invoked if it is proved that the action of the secured creditor is alleged to be fraudulent or their claim may be so absurd and untenable which may not require any probe. But in the case on hand(both cases particularly in O.S. No.349/2005), the father-in-law of the plaintiff in O.S.No.350/2005 has collusively filed O.S.No.349/2005 for declaration of possession and consequential injunction. But the property scheduled to both the plaints are one and the same, which is the property furnished as security for the loan obtained from the Defendant-Bank to the tune of Rs.2,95,00,000/- by the plaintiff in O.S.No.350/2005. Under such circumstances, I am of the considered view that the order passed by the learned District Munsif, Pollachi, in I.A.No.1194/2005 in O.S.349/2005 and in I.A.No.1195/2005 in O.S.No.350/2005 are liable to be set aside and both suits viz. O.S.No.349 and 350 of 2005 are liable to be dismissed under Order VII Rule 11 of CPC.

4. In the result, CRP.PD.No.390 and 391 of 2006 are allowed. No costs. Connected CMP.No.3428 & 3429 of 2006 are closed. Consequently, O.S.No.349 and 350 of 2005 on the file of District Munsif, Pollachi, are dismissed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

ssv

To,
The District Munsif, Pollachi.

C.R.P. (PD) .No.390 & 391 of 2006
and
C.M.P.No.3428 & 3429 of 2006
12.09.2006

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